

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JESSICA BERGER, ET AL,

Plaintiffs,

v.

PERRY'S STEAKHOUSE OF ILLINOIS,
LLC., D/B/A PERRY'S STEAKHOUSE
AND GRILLE, ET AL,

Defendants.

Case No: 1:14-cv-08543

Judge: Thomas M. Durkin

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
AMENDED SETTLEMENT AGREEMENT**

PLAINTIFFS JESSICA BERGER, et al ("Plaintiffs"), and DEFENDANTS PERRY'S STEAKHOUSE OF ILLINOIS, L.L.C. ("PSI"), et al, collectively referred to as "the Parties," by and through their respective attorneys, respectfully move this Court to approve their amended settlement agreement, attached to this Motion as Amended Exhibit "A." In support of this Motion, the Parties state as follows:

1. On February 9, 2021, the parties filed their Joint Motion for Preliminary Approval of their Settlement Agreement. That motion remains pending and a status hearing is set for Thursday, February 18, 2021.

2. Later that week, Class Counsel received a phone call from class member, Jorge Bahena, which prompted Class Counsel to look at the settlement amount slated for Mr. Bahena. Upon doing so, Class Counsel noticed that based on the number of hours Mr. Bahena worked between October 2014 and December 2017, the amount of the Side Work settlement award slated

for Mr. Bahena proportionately did not compute in conformity with Class Counsel's overall numerical formulation.

3. Upon further review of the source data for the 2014-2017 Side Work damage calculations, Class Counsel discovered that for Mr. Bahena, and fortunately solely for Mr. Bahena, there was an incomplete calculation, that is, only a few lines of data had been inserted into the overall spreadsheet regarding when Mr. Bahena received his first table assignments on the days he worked. Therefore, the calculation of his 2014-2017 Side Work damages was incorrectly undercalculated by approximately \$3,200-\$3,500.¹

4. Since the amount of money designated for each of the Plaintiffs' separate claims (CCOF, Notice and Side Work) was already decided upon, the question then became how to correct this oversight and redistribute the amount of money designated for the Side Work claims without prejudice to any eligible claimant.

5. The calculation of the time each server had available for "opening" side work, upon which the 2014-2017 Side Work damage calculation was originally based, was calculated at the outset to factually support Plaintiff's Side Work claim at the time the Parties filed their respective motions for summary judgment.² At that time, the calculation for the first three months of 2018 was not completed because, in Class Counsel's opinion, it was not necessary; the 3 plus years completed was more than sufficient to illustrate Plaintiffs' point. When it was time for Class Counsel to determine the formula for Side Work damages in connection with Plaintiffs' settlement proposal, rather than spend the considerable time and money to make this calculation for this short

¹ To determine the exact amount his damages were undercalculated, Class Counsel would have to search the Open Table pdf files for 3 plus years and insert approximately 900-1000 lines of data for calculation. This would be a very time-consuming task.

² Class Counsel wants to make clear that the omission of this one server's opening Side Work data has no effect on Plaintiffs' theory of liability on the Side Work claims, that the overall percentage of time all class members spent on duties PSI defined as "Side Work" handily exceeded 20% of their overall time worked on a weekly basis.

period of time, Class Counsel decided to utilize the total number of hours all servers worked during that 3-month time frame in 2018 and allocate to each server their *pro rata* share of 20% of all their time worked multiplied by \$3.30. Looked at another way, this total sum came to slightly over \$3.30 (1 hour) extra pay for each shift worked; an alternative formula Class Counsel believes is fair and reasonable.

6 Thus, to incorporate an appropriate recovery for Mr. Bahena, Class Counsel has determined that the fairest way to do so is to combine the sums set aside for both the 2014-2017 timeframe (\$53,356.82) and the 2018 timeframe (\$3,745.22), a total sum of \$57,102.04, and essentially utilize the formula previously utilized to compensate the 2018 sub-class. To equal the total sum of \$57,102.04, the total number of hours worked by all eligible Side-Work Class Members 90,007.18 (84,332.60 plus 5,674.58) is multiplied by \$3.30 (\$297,023.69) and then multiplied by 19.225%. Thus, rather than being allocated an amount based upon 20% of all hours worked, each eligible Side Work Settlement Recipient will receive \$3.30 for 19.225 percent of all hours they worked. This results in a difference of less than 1% from the previously identified 2018 sub-class. For the prior 2014-2017 sub-class, the new calculation based on total hours worked rather than available opening side work time resulted in a different percentage of the total for each individual server; with some servers actually receiving slightly more than they would have received under the original calculation. However, for the vast majority of the servers, the change in formula produced only a fraction of one percent change in their total recovery for the side work claim and no individual variance was more than three percent.

7. In summary, Class Counsel represents to the Court that this revised calculation of the Side-Work component of the Settlement Agreement treats all Side-Work class members equally and is equally justifiable as a fair, reasonable and adequate settlement of the plaintiffs'

Side-Work claims.

8. Defendants have no objection to the granting of this Motion and have agreed to the attached Amended Settlement Agreement (Amended Exhibit A to this Motion) and the Amendments made to Attachments A (the summary of all distributions) and Attachments F and G.

WHEREFORE, for all the reasons provided above and in the Parties' original Joint Motion for Preliminary Approval filed on February 9, 2021, the Parties ask this Honorable Court to Preliminarily Approve the Attached Amended Settlement Agreement, and provide such other relief as originally requested.

Submitted for both parties (with permission) by:

/s/Colleen M. McLaughlin

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